

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STEVEN D. STEWART,

ORDER

Plaintiff,

10-cv-360-bbc

v.

TIMOTHY GILBERG, JOSEPH HASSELL,
TRACY MARTIN, PHILLIP K. HENNEMAN,
LEONARD JOHNSON, THOMAS SCHMIDT,
DR. BURTON COX, and CINDY SAWINSKI,

Defendants.

The United States Marshal's office has filed a "Process Receipt and Return" form showing that it has been unable to serve plaintiff's complaint on defendant Thomas Schmidt, who now resides in Australia, according to information obtained from the Department of Justice. According to the notation on the form, the deputy marshal attempted to locate defendant Schmidt in Australia using various websites. Because Thomas Schmidt is a somewhat common name and there were no other personal identifiers, the deputy marshal was unsuccessful. The Department of Justice has no other forwarding address on file for defendant Schmidt.

I conclude that the United States Marshal has made a reasonable effort to locate defendant Schmidt and has been unsuccessful. Sellers v. United States, 902 F.2d 598, 602 (7th Cir. 1990) (once defendant is identified, marshal must make reasonable effort to obtain current address).

A plaintiff cannot maintain a lawsuit against a defendant such as Schmidt who has not received notice of the claim against him and is therefore unable to defend against allegations of wrongdoing. Instead, the action must be dismissed as to defendant Schmidt, without prejudice to plaintiff's filing a new action against him at some future time if plaintiff is able to locate Schmidt to serve him with his complaint.

ORDER

IT IS ORDERED that defendant Thomas Schmidt is DISMISSED from this action, without prejudice to plaintiff's filing a lawsuit against him sometime in the future.

Entered this 21st day of October, 2010.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge